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No. 92-

In the

Supreme Court of the United States

OCTOBER TERM, 1992

DISTRICT OF COLUMBIA,
Petitioner,

v.

THOMAS HANSFORD AND MARY DELL HANSFORD,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a state's exercise of judicial authority over a governmental function that Congress directed the District of Columbia to perform as its agent, on United States land over which the state has ceded all jurisdiction, violates the exclusive jurisdiction conferred on Congress by Article I, § 8, C1. 17, of the Constitution.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI

The District of Columbia petitions for a writ of certiorari to review a decision of the Court of Appeals of Maryland.

OPINIONS BELOW

The decision of the Court of Appeals of Maryland is reported at 329 Md. 112, 617 A.2d 1057. A. 1a. Its grant of certiorari is reported at 321 Md. 709. 584 A.2d 708. The decision of the Court of Special Appeals of Maryland is reported at 84 Md. App. 301. 578 A.2d 844. A. 1b. The oral opinion by the Circuit Court for Prince George's County is unreported. A. 3c. Its judgment and corrected judgment dismissing the action against the District of Columbia are also unreported. A. 1c-2c.

JURISDICTION

The Maryland Court of Appeals judgment was entered January 14, 1993. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I. § 8, of the Constitution:

The Congress shall have Power * * *

* * *

[C1. 17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings[.]

Act of Feb. 28, 1923, 42 Stat. 1360, ch. 148:

The Commissioners of the District of Columbia are authorized and directed to acquire a site for a home and school for feeble-minded persons, said site to be located in the District of Columbia or in the State of Maryland or in the State of Virginia, and to erect thereon suitable buildings at a total cost not exceeding $300,000, of which not more than $38,000 shall be expended for a site, and toward said purpose there is reappropriated the sum of $100,000 contained in the District of Columbia Appropriation Act for the fiscal year 1923 toward the erection of suitable buildings for a home and school for feeble-minded persons, to be available immediately. If the land proposed to be acquired is within the District of Columbia and the same can not be acquired by purchase at a price satisfactory to the commissioners, they are authorized to condemn the same under the provisions of chapter 15 of the Code of Law for the District of Columbia. If the land proposed to be acquired is without the District of Columbia and can not be purchased at a satisfactory price, the Attorney General of the United States, at the request of the Commissioners of the District of Columbia, shall institute condemnation proceedings to acquire such land as may be selected for said site either in the State of Maryland or in the State of

Virginia in accordance with the laws of said States, the title of said land to be taken directly to and in the name of the United States, but the land so acquired shall be under the jurisdiction of the Commissioners of the District of Columbia as agents of the United States * * *.

Maryland Session Laws of 1906, ch. 743, §§ 1-2:[1]

1. *Be it enacted by the General Assembly of Maryland*, That the consent of the State of Maryland is hereby given in accordance with the seventeenth clause, eighth section of the first Article of the Constitution of the United States, to the acquisition by the United States by purchase, condemnation or otherwise of any land in this State required for sites for custom houses, courthouses, postoffices, arsenals or other public buildings whatever, or for any other purposes of the government.

2. That exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State, but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands.

Other Maryland statutes appear in the appendix. A. ld.

STATEMENT OF THE CASE

1. *The federal enclave.* At the direction of Congress, the United States purchased about 827 acres of land in Anne Arundel County, Maryland, in 1923 for the use by the District of Columbia, using District appropriations to pay the purchase price. Act of Feb. 28, 1923, 42 Stat. 1360, ch. 148.

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[1] The law was at one time codified as Md. Code (1957) Art. 96, § 36. It is currently uncodified but remains in force. Md. Code (1957, 1984 repl.) Art. 96, ed. note. *See* Md. Session Laws of 1984, ch. 284, § 11: "AND BE IT FURTHER ENACTED, That Section(s) of the Annotated Code of Maryland be transferred, without amendment, to the Session Laws as follows: * * * Article 96 — United States. Section * * * 36 * * *."

When the land was bought, it was titled in the name of the United States and placed under the jurisdiction of the three commissioners of the District as "agents of the United States," as Congress had directed. At the time of the acquisition, Maryland law automatically ceded "exclusive jurisdiction" over any land acquired by the United States by purchase, condemnation, "or otherwise," reserving only the power to serve civil and criminal process on the land. Maryland Session Laws of 1906, ch. 743, §§ 1-2.

The District continues to use the Anne Arundel property, which remains titled in the name of the United States. One portion, known as Oak Hill, is used as a facility for juveniles transferred to the District's Department of Human Services for rehabilitation following an adjudication of delinquency. The District's juvenile justice system was enacted largely by Congress. Act of December 23, 1963, Pub. L. 88-241, 77 Stat. 532 (1963), *as amended* by District of Columbia Court Reform Act, Pub. L. 91-358, 84 Stat. 539, D.C. Code § 16-2301 *et seq.* (1989 repl.)

2. *Proceedings at the trial level.* In 1988, respondents Thomas Hansford, Sr., and Mary Dell Hansford filed a complaint against the District in the Circuit Court of Prince George's County, Maryland, following the murder of their son on August 16, 1987. The complaint also named as defendants Carl Sewanti Richardson, a juvenile who had escaped from Oak Hill and who had been convicted of felony murder in the killing of Thomas Hansford, Jr., and J.E. Neil Ollivierra, acting superintendent of Oak Hill in 1987.

The complaint alleged several causes of action against the District under Maryland law—wrongful death; negligence; respondeat superior as Mr. Ollivierra's employer—as well as a federal civil rights claim under 42 U.S.C. § 1983.

The complaint alleged that Richardson had been committed to Oak Hill after having been found delinquent for carrying a pistol without a license and for having previously

been found delinquent on other serious charges. Complaint, ¶¶ 9, 10. Richardson escaped from Oak Hill on June 11, 1987. *Id.*, ¶ 14. According to the complaint, Richardson participated in the murder of the younger Hansford some two months later about twenty-five miles from the enclave. *Id.*, ¶¶ 21-23. The complaint alleged that Richardson had escaped from Oak Hill at least once previously. *Id.*, ¶¶ 12-13. It also alleged that the District, by policy and custom, permitted detainees to be missing and failed to take corrective actions to obtain their return. *Id.*, ¶¶ 17-20. In particular, the complaint asserted, the District had not taken "appropriate precautions" to prevent Richardson's escape, *id.* ¶¶ 11, 13, 31, and had been negligent in failing to recapture him. *Id.*, ¶ 28.

The trial court dismissed suit against the District, basing its dismissal on Maryland venue statutes as interpreted by a 1909 Maryland Court of Appeals decision.[2] A. 3c-5c. The court denied the motion to dismiss the claims against Mr. Ollivierra pending further development of the facts. A. 5c. The court subsequently entered an order making dismissal of the action against the District a final judgment. A. 1c, *as amended by* A. 2c.

3. *Proceedings on appeal.* On appeal by the Hansfords, the District presented an additional basis for dismissal: the District's immunity under Maryland law and under Article 1, § 8, Cl. 17, of the Constitution. The District also argued that the complaint did not state a federal cause of action because, based on *Martinez v. California*, 444 U.S. 277 (1980), the District had no duty to protect the younger Hansford. The District made similar arguments with respect to the common law claims.

The Maryland Court of Special Appeals affirmed dismissal of the claims against the District but did not reach the District's constitutional or common law arguments. A. 1b-9b.

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[2] *Phillips v. Baltimore City*, 110 Md. 431, 72 A. 902 (1909).

Rather, relying on the 1906 Maryland session law ceding exclusive jurisdiction to the United States, as well as a more recent enactment (Maryland Code, State Government § 14-102(b) (1984 & 1992 supp.)), the court held that Maryland laws precluded Maryland courts from exercising jurisdiction over District activities on federal enclaves acquired before 1943. A. 7b.

The Court of Appeals of Maryland granted the Hansfords' petition for a writ of certiorari and reversed. A. 1a. It held that the District can be sued in Maryland courts for its alleged tortious conduct on a United States enclave in Maryland, just as any private individual may be sued. A. 14a-17a, 20a-23a. The court of appeals rejected both lower court holdings; it also rejected the District's argument that assertion of Maryland judicial control over the District for its governmental activities on a federal enclave acquired at Congress's direction would be an unconstitutional assertion of state control.

The court acknowledged that its holding meant that the District would be subject to suit in Maryland because served with process there and also under Maryland's longarm statute because the District transacts business, uses real property, and allegedly caused tortious injury in Maryland.[3] A. 14a-15a & n. 7.

While the court seemed to concede that the District's activities on the federal enclave could not be controlled by the executive and legislative branches of the Maryland government, it wrote that the federal enclave provided no protection from state judicial control in tort litigation. The court interpreted this Court's decisions as "up[holding] a state court's exercise of jurisdiction over personal injury and wrongful death actions arising from activities occurring on federal enclaves * * *." A. 16a-18a, *citing Gulf Offshore Co. v. Mobile Oil Corp.*, 453 U.S. 473 (1981); *Evans v. Cornman*, 398 U.S. 419 (1970); *Ohio River Contract Co. v. Gordon*, 244 U.S. 68 (1917).

[3] Md. Code, Courts and Judicial Proceedings §§ 6-101 to 6-103.

According to the court, the District is to be treated like a private party for purposes of personal jurisdiction and immunity even when its activities occur only on a federal enclave and are purely governmental: "In the context of this case * * * the District of Columbia is not the United States, is not carrying out a national purpose, and is not entitled to governmental immunity or supremacy of the United States." A. 21a. Maryland courts "need not recognize the governmental immunity of another state or of a municipal corporation * * * outside of Maryland." A. 22a, *citing Nevada v. Hall*, 440 U.S. 410 (1979).

REASONS FOR GRANTING THE WRIT

This dispute concerns the constitutional power of Congress to exercise its Article I, § 8, Cl. 17, power of "exclusive Legislation" over federal enclaves, by delegating governmental functions to the District of Columbia as Congress's agent, without thereby subjecting its agent to the jurisdiction and coercive power of state courts. For the first time in the seven decades since the Oak Hill enclave was created, a court has held that the District's exercise of those governmental functions is not shielded from state authority. That decision subverts congressional intent and congressional exercise of § 8, Cl. 17, power.

In 1923, Congress exercised its § 8, Cl. 17, power for the benefit of the District when it directed that land purchased for governmental use by the District in Maryland or Virginia be titled in the name of the United States and be under the jurisdiction of the commissioners of the District as "agents of the United States." Act of Feb. 28, 1923. The statutory language mirrored a previous congressional decision to protect the District from neighboring state assertions of jurisdiction. *See*, *infra*, at 13-14.

The Maryland Court of Appeals decision, by denying the District the protection that Congress granted in 1923, generates a substantial unresolved constitutional issue—

whether Congress can protect its agent from the civil jurisdiction of state courts when the agent acts on a federal enclave over which Congress has exclusive jurisdiction. The Maryland decision results in an intergovernmental dispute of first impression that this Court should resolve. *Cf. Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71, 79 (1961) (suggesting that dispute among states be submitted to the Court for "final, authoritative determination").[4] Since the dispute concerns a constitutional claim of immunity from the jurisdiction and coercive powers of state courts, the state courts should not be the final arbiters: " 'It is impossible that there should be impartiality when a party affected is to be judge.' " *Nevada v. Hall*, *supra*, 440 U.S. at 435 (Rehnquist, J., dissenting) (*quoting* W. Davie in 4 J. Elliot, DEBATES ON THE FEDERAL CONSTITUTION 159 (1876)).

The Maryland Court of Appeals decision subjects the District's governmental activities on a federal enclave to the laws, procedures, judges, and juries of another jurisdiction even though the District is expressly acting as "agent[ ] of the United States." It will require the District to justify its discretionary actions in rehabilitating children and youths, under the District's congressionally-enacted juvenile correctional laws, to judges and juries who will be able to substitute their judgments for those of the District's administrators. *See*, *infra*, at 15-17. In addition, the Court of Appeals' holding that the District's governmental operations on federal land give it a permanent "presence" in Maryland for jurisdictional purposes would apparently allow suit against the District in Maryland courts for injuries that have no relationship to the District's juvenile rehabilitation programs in Maryland. These problems are compounded because

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[4] A governmental claim of immunity "involves a claim to a fundamental constitutional protection." *Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.*, 61 U.S.L.W. 4045, 4047 (U.S. Jan. 12, 1993). Immediate appellate review is desirable to avoid subjecting public agencies and officials to litigation costs, risks of discovery, and trial. *See id.* (Eleventh Amendment immunity); *Mitchell v. Forsyth*, 472 U.S. 511 (1985)(qualified immunity); *Nixon v. Fitzgerald*, 457 U.S.731 (1982)(absolute immunity).

the Maryland Court of Appeals decision has obvious implications for the District's governmental activities in Virginia. There, the District runs a large prison complex on federal enclaves, also acquired under the authority of Article I, § 8, C1. 17. The District's presence on enclaves in Virginia is much larger than its presence on the Oak Hill enclave in Maryland.[5]

1. *Article I, § 8,. C1. 17. is a complete shield against state interference in governmental activities on federal property.* The 17th Clause of Article I, § 8, is the source of the congressional power both to establish the District of Columbia and to exercise exclusive jurisdiction over property purchased with the consent of the states, such as Oak Hill.[6]

The Framers' purpose in giving the central government exclusive jurisdiction was to preclude state interference with activities that Congress has authorized. As James Madison explained in FEDERALIST PAPERS, No. 43, "[t]he public money expended on such places, and the public property deposited in them, require that they should be exempt from the authority of the particular State." Clause 17 has since been interpreted as severing an enclave from the state entirely, "as

[5] The District recognizes that it may be sued in the Article I courts established by Congress for the District for torts committed elsewhere. *See*, R.S. D.C. § 2, D.C. Code § 1-102(a)(1992 repl.) (District defined as "a body corporate for municipal purposes, and may * * * sue and be sued, plead and be impleaded * * *"). In those cases, however, District law and immunity doctrines provide a measure of protection. The present case does not involve a claim against the District for activities outside a federal enclave, such as one arising out of an automobile accident on a state road, which could subject the District to state court jurisdiction. *See Nevada v. Hall*, 440 U.S. 410 (1979).

Federal claims against the District may, of course, be raised in federal courts but the District has been held not to be subject to federal court diversity jurisdiction. *Long v. District of Columbia*, 261 U.S. App. D.C. 1, 820 F.2d 409 (1987); *Mann v. District of Columbia*, 742 F.2d 750 (3d Cir. 1984); *Dahn v. District of Columbia*, 865 F.2d 1257 (4th Cir. 1988)(unpublished; text on WESTLAW).

[6] This Court has held that the phrase "other needful buildings" in § 8, C1. 17, encompasses all structures found to be necessary to accomplish the functions of the central government. *James v. Dravo Contracting Co.*, 302 U.S. 134, 143 (1937).

if it had been occupied by a foreign sovereign." *United States v. Cornell*, 25 F. Cas. 650, 653 (No. 14,868) (C.C.D. R.I. 1805) Story, J.); *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 533 (1885) (the federal jurisdiction over § 8, Cl. 17, enclaves is "exclusive of all state authority").[7] To the extent that states reserve the right to serve process in enclaves, it is only with respect to activities that occur outside the enclave, "to prevent the reservation from being a sanctuary for fugitive offenders." *United States v. Unzeuta*, 281 U.S. 138, 143 (1930).

Although there has been an evolution in this Court's interpretation of Clause 17, the Court has never permitted state interference with governmental activities on federal land:

> The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, *so long as there is no interference with the jurisdiction asserted by the Government.* * * * It is friction, not fiction, to which we must give heed.

Howard v. Commissioners of Sinking Fund, 344 U.S. 624, 627 (1953) (italics added). States may exercise some functions that have no impact on governmental activities on the enclaves, such as expanding city limits to permit taxation of income earned by employees working on enclaves, *id.*,

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[7] As a result, unless Congress has expressly legislated to the contrary, the states are powerless, on federal enclaves over which Congress has exclusive jurisdiction, to prosecute crimes, *States v. Unzeuta*, 281 U.S. 138 (1930); tax private property, *Surplus Trading Co. v. Cook*, 281 U.S. 647 (1930); impose civil penalties, *Western Union Teleoraph Co. v. Chiles*, 214 U.S. 274 (1909); enact legislation modifying private causes of action, *Murray v. Joe Gerrick & Co.*, 291 U.S. 315 (1934); *Arlington Hotel Co. v. Fant*, 278 U.S. 439 (1929); or exercise jurisdiction over delinquent acts by juveniles, *United States v. Juvenile Male*, 939 F.2d 321, 323-324 (6th Cir. 1991).

at 624,[8] and they may no longer deprive residents of enclaves of fundamental civil rights, such as the right to vote on matters which affect them in "numerous and vital ways." *Evans v. Cornman*, *supra*, 398 U.S. at 424. For its part, Congress has enacted legislation federalizing state law on the enclaves.[9]

Notwithstanding this evolution, neither the Court nor Congress has suggested that state instrumentalities can breach the jurisdictional boundary erected by § 8, Cl. 17, if state action would impair governmental functions on the federal enclave. Even when the United States has acquired property by means other than § 8, Cl. 17, so that its jurisdiction is not "exclusive," governmental activities on enclaves "will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed." *Fort Leavenworth R.R. Co. v. Lowe*, *supra*, 114 U.S. at 539.

Thus, § 8, Cl. 17, continues to have a prophylactic role, protecting the enclaves from disruptive assertions of state authority. While the Maryland Court of Appeals purported to acknowledge this role, its holding ignored the real restraints § 8, Cl. 17, places on the states. The Court of Appeals justified its holding that District governmental activities on a federal enclave are unprotected from the jurisdiction and coercive powers of the Maryland courts on two grounds: it held, *first*, that the District, unlike the federal government, cannot benefit from the constitutional provision any more than private citizens; and, *second*, that whatever protection § 8, Cl. 17, may afford against interference

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[8] However, annexation has been denied when it might create friction. *United States v. McGee*, 714 F.2d 607, 612-613 (6th Cir. 1983); *United States v. City of Bellevue*, 474 F.2d 473, 476 (8th Cir. 1973), *cert. denied*, 414 U.S. 827 (1973).

[9] *See, e.g.*, 4 U.S.C. §§ 105-110 (taxation; Buck Act); 16 U.S.C. § 457 (wrongful death); 18 U.S.C. § 13 (Assimilative Crimes Act); 26 U.S.C § 3305(d) (unemployment compensation); 40 U.S.C. § 290 (workers compensation).

by the executive and legislative branches of the state government, it affords none against interference by the judicial branch. Neither justification for asserting jurisdiction over the District for its activities on the Oak Hill enclave is sustainable.

2. *Congress has made the District a beneficiary of the protection of Article I, § 8, Cl. 17.* There is no textual basis in Article I, § 8, Cl. 17, for the proposition that the District, which was created under the authority of Clause 17 in order to prevent state interference with the Seat of the Government, is nevertheless answerable to the authority of a state when, at the direction of Congress and expressly as an agent of Congress, it carries out governmental responsibilities on a federal enclave. The District is clearly not subject to oversight by Maryland (including its judicial branch) for its activities in the District proper, which also was once part of that state. The constitutional language—that the national government has "like Authority" over enclaves as over the District—must surely include like protection for the District when it performs functions delegated by Congress on a federal enclave: "The necessity of a like [central] authority over forts, magazines, etc., established by the general government, is not less evident. * * * [T]hey should be exempt from the authority of the particular State." J. Madison, FEDERALIST PAPERS, No. 43. As the Court observed in *Surplus Trading Co. v. Cook*. 281 U.S. 647, 652 (1930): " 'Exclusive legislation' is consistent only with exclusive jurisdiction. It can have no other meaning as to the seat of government, and what it means as to that it also means as to forts, magazines, arsenals, dockyards, etc."

Although the District is not the federal government for most purposes, it is nevertheless a creation of the Constitution and the Congress, established to serve a national need. Under the Constitution, the Congress is the legislature for the District (as it is for the enclaves), exercising both national and "municipal" power. *See District of Columbia v. John R.*

Thompson Co., 346 U.S. 100, 108 (1953). The District is its creature, endowed with whatever powers Congress has delegated to it. *Id.* Thus, in the dichotomy of power with which § 8, Cl. 17, is directly concerned—between the national government and the states—the District is unmistakably national.

When it enacted the 1923 Act authorizing acquisition of the Oak Hill enclave, Congress, undoubtedly familiar with the prevailing law that federal jurisdiction on a § 8, Cl. 17, enclave is "exclusive of all state authority,"[10] deliberately gave the District complete protection from state interference, to the limits of its constitutional powers.

First, the plain language of the statute reflects the congressional intent. Title to the land was "to be taken directly to and in the name of the United States" and the commissioners were to exercise jurisdiction "as agents of the United States." Act of Feb. 28, 1923.

Second, Congress had previously deliberately adopted similar statutory language in order to protect the District from assertions of state jurisdiction for its activities on a federal enclave. In 1909, after Congress had authorized the District to acquire land in its own name for construction of a reformatory and workhouse,[11] and the District had negotiated the purchase of land in Virginia, the District and the Attorney General informed Congress that the District would be subject to the laws of Virginia if the land were titled in the name of the District. *See* 44 Cong. Rec. 4525-4526 (statements by Rep. Tawney). According to the Attorney General, purchase by the District would leave the District "without exclusive jurisdiction over the land. as the cession of jurisdiction and authority to purchase, granted to the United States by the States of Maryland and Virginia, respectively, do not apply to the Commissioners of the District." H.R. Doc. No. 84, 61st Cong., 1st Sess. (1909)

[10] *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 533 (1885).

[11] Act of Mar. 2, 1909, 35 Stat. 717, ch. 250.

at 2. Faced with this news, Congress amended the legislation to allow the District's purchase to be "taken directly to and in the name of the United States." Act of Aug. 8, 1909, 36 Stat. 122, ch. 7 (1909). Congress used similar language when it authorized the District to acquire additional property in Virginia in 1913;[12] in Maryland in 1923 (at Muirkirk);[13] and in Maryland in 1930.[14] Thus, although no reason was given in the legislative history of the 1923 Act for titling land in the name of the United States and for deputizing the District commissioners as "agents of the United States," it is most probable that Congress in 1923 (as in 1909) intended to use its Article I, § 8, Cl. 17, powers to delegate to the District commissioners its own "exclusive jurisdiction" over the enclave.

Third, in 1923 the District was wholly a creature of Congress. Congress was the District's only legislature, exercising close control over all of its activities. The commissioners were presidential appointees, confirmed by the Senate.[15] Congress therefore had every incentive to use its Article I, § 8, Cl. 17, powers to benefit and protect the District by giving it the same degree of immunity from state interference as the United States possesses.

None of the precedent from this Court which the Maryland Court of Appeals cited justifies state court exercise of jurisdiction over the District for governmental activities on land under the exclusive jurisdiction of the United States. That precedent either deals with private actors engaged in private or commercial activities on and off enclaves or ensures that

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[12] Act of Mar. 4, 1913, 37 Stat. 939, 969-70, ch. 150.

[13] Act of Feb. 28, 1923, 42 Stat. 1358, ch. 148.

[14] Act of Apr. 18, 1930, 46 Stat. 218, ch. 186.

[15] Organic Act of 1878 for the District of Columbia, 20 Stat. 102, ch. 180.

residents of enclaves lose none of their civil rights as a result of their residency.[16]

The Maryland Court of Appeals' attempt to equate the District with private actors cannot serve as a basis for ignoring the constitutional limitations on state power to exert authority over governmental actions on federal enclaves. Unlike private actors, moreover, the District receives no benefits from the State of Maryland that would justify subjecting it to state jurisdiction. It operates solely on federal property; its activities are governmental, not proprietary or commercial; it transacts no business and performs no work or services in Maryland proper; it derives no revenue from activities in the state; it does not depend on the protection of state law.

3. *Article I, § 8. Cl. 17, protection includes immunity from the jurisdiction and coercive powers of state courts.* Exercise of judicial power at the demand of individual claimants

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[16] In *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473 (1981), this Court allowed state courts to exercise jurisdiction over private disputes arising from activities on the outer continental shelf. Allowing state courts to hear such disputes under state law which had been federalized by the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333(a)(2)(A), the Court wrote, would not be incompatible with federal jurisdiction. Absent evidence that Congress had intended to make federal court jurisdiction exclusive, the usual presumption, that state courts enjoy concurrent subject-matter jurisdiction over federal causes of action, governed. *Id.* at 478. The question of whether state courts have jurisdiction over a governmental actor that is present only on an enclave was neither raised nor decided. In any event, the Court recognized that the presumption of concurrent state court jurisdiction could be rebutted "by unmistakable implication from legislative history, or by a clear incompatibility between state court jurisdiction and federal interests." *Id.* For reasons given in the text, above, the incompatibility here is obvious, as is the congressional intent to protect the District from state assertions of authority. Moreover, unlike private parties (*id.*, at 483, n. 12), the District cannot remove to federal court on diversity grounds. *See*, *supra*, at 10, n. 7 (District is not subject to diversity jurisdiction).

In *Evans v. Cornman*, 398 U.S. 419 (1970), a Fourteenth Amendment case, this Court held that residents of federal enclaves, who are affected

[Footnote continued on next page]

is as capable of interfering with governmental operations on an enclave as is exercise of a state's executive or legislative powers. The Court of Appeals decision contains no limiting principle. By making the enclave completely transparent for suits against the District, the Court of Appeals decision subjects the District to injunctions, other coercive writs, and punitive damages as if it were a private entity operating off the enclave.

Which court system is to exercise jurisdiction and coercive authority over a governmental actor has historically been considered a matter of utmost importance. Congress's Article III, § 1, power to establish "inferior" federal courts was deemed necessary because of fear that the "prevalency of a local spirit," coupled with the manner of appointment of state judges, could make the state judiciary too partial to, or "too little independent" of, parochial interests. A. Hamilton, FEDERALIST PAPERS, No. 81; *see*, *Nevada v. Hall*, *supra*, 440 U.S. at 434 (Rehnquist, J., dissenting) (before

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[Footnote continued from the previous page]
by the surrounding state in "numerous and vital ways," *id.* at 424, and who are treated as state residents in the census and congressional apportionment, could not be deprived of their right to vote in state and local elections. In the present case, no individual's constitutional right is at stake; neither would anyone be left without a remedy. At worst, an individual claiming injury will have to have his claims determined in a forum other than his first choice. Besides, as the Court explained in *Evans*, Congress can "restrict as well as extend the powers of the States" in federal enclaves. *Id.* For reasons stated in the text, Congress imposed such restrictions on state power in 1923 when it made the District its agent on United States property.

In *Ohio River Contract Co. v. Gordon*, 244 U.S. 68 (1917), this Court held that a government contractor could be sued in state court by an employee injured during work on a federal enclave. The contractor was subject to state court jurisdiction, not because of its activities on the enclave, but because of its presence outside the enclave' "[I]t is clear from the facts we have stated that the business carried on by the corporation was not confined to the land owned by the United States * * *. * * * This clearly constituted the doing of business within the state and subjected the corporation to the jurisdiction of the Kentucky courts." *Id.* at 72.

adoption of Constitution, "litigants were left to the state courts and to the provincialism that proved the bane of this country's earliest attempt at political organization"). In a similar vein, this Court has recognized that a state's "interest in immunity encompasses not merely *whether* it may be sued, but *where* it may be sued." *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 99 (1984) (italics in original; footnote omitted). For that reason, the Court has held that the Eleventh Amendment precludes suit against a state in federal court even if the state has waived its immunity to suit in its own courts. *See, e.g., Great Northern Life Ins. Co. v. Read*, 322 U.S. 47 (1944); *see, id.*, at 53-54 (noting that the "history of sovereign immunity and the practical necessity of unfettered freedom for government from crippling interferences require a restriction of suability to the terms of the consent, as to persons, courts and procedures"). Finally, when Congress enacted the Federal Tort Claims Act to permit tort suits to be brought against the United States, it considered the forum for such suits to be so significant that it made district court jurisdiction exclusive. 28 U.S.C. § 1346(b).

In short, state judicial control can be as intrusive as executive and legislative control. That is especially so if, here, such control allows impassioned local juries to judge the District's governmental activities, particularly activities which contain an element of danger to the community, such as operation of a juvenile facility or a prison; or if such control generally subjects the District to another state's long-arm jurisdiction as a consequence of its administration of a federal enclave as agent of the United States.

* * *

In 1923, Congress exercised its Article I, § 8, Cl. 17, powers to empower the District of Columbia to perform government functions as an agent of the United States on federal land, unimpeded by the surrounding state. The Maryland Court of Appeals' holdings, that state courts have jurisdiction over

the District solely by virtue of its presence on the Oak Hill enclave and that District activities there are subject to state court scrutiny, subverts Congress's express constitutional authority to exclude state instrumentalities from exercising jurisdiction over federal lands.

CONCLUSION

The petition should be granted.

Respectfully submitted.

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